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[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

[REDACTED]

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 27, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Portage County Department of Human Services in regard to Medical Assistance (MA)/BadgerCare (BCP), a hearing was held on May 27, 2015, at Stevens Point, Wisconsin.

The issue for determination is whether the petitioner was overpaid adult MA/BCP benefits from July 2013 through March 2014.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]  
Portage County Department of Human Services  
817 Whiting Avenue  
Stevens Point, WI 54481-5292

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Portage County.
2. The petitioner's BCP household of two persons (self and minor child) was certified for BCP from at least April 2013 through March 2014. No one was required to pay a BCP premium as a condition of coverage due to the low reported income (under 133% FPL). The household's

[REDACTED]  
eligibility was calculated on the basis of reported gross monthly household income of \$1,614 (unearned), less \$189.82 paid out in child support. An eligibility notice was mailed to the petitioner on April 24, 2013, reminding him that he would need to report any income increase that caused the household's income to exceed \$1,719.03. *See*, Exhibit 1, Notice dated February 28, 2012.

3. The petitioner began employment at [REDACTED] in May 2013. This should have been reported by June 10, to affect July benefits. Gross earnings were at least \$400 every month from April through at least December 2013. *E.g.*, he grossed \$597 in May, \$622 in June, \$457 in July, and \$667 in August. *See*, Exhibit 2, earnings verification. These earnings put his household over the reporting threshold for every month in question.
4. The petitioner did not report his increased income until at least January 2014. An income verification request was mailed to him on January 24, 2014, and verification was returned in February 2014.
5. The petitioner's child support obligation ended in July 2013.
6. The combination of the petitioner's Social Security Disability and his gross [REDACTED] earnings put him over the threshold for having to pay a BCP premium. The petitioner's daughter, counted as his household member, was also receiving Social Security Surviving Child benefits of \$807 monthly (\$819 beginning in December 2013). The combination of the SS Disability, [REDACTED] earnings, and SS Surviving Child benefits exceeded the BCP 200% FPL income eligibility limit (\$2,585 monthly for two persons from July 2013 through March 2014. This meant that the petitioner was not eligible for BCP, even with a premium.
7. When the Department recalculated BCP eligibility for July 2013 through March 2014, it determined that the household had been overpaid \$1,355.45 for the period. A Wisconsin *Medicaid/BadgerCare Plus Overpayment Notice* and worksheet were issued to the petitioner on April 7, 2015. The *Notice* advises that the petitioner was overpaid \$1,355.45 for the period (claim #0900431000), due to the recipient's reporting error.
8. Different premium and income eligibility rules apply to adults versus children. An adult is subject to a BCP premium liability when the household's income reaches 133% of the federal poverty level (FPL), and (unless self-employed) was not eligible for BCP *at all* when income exceeded 200% FPL in 2013. The adult petitioner was not eligible for BCP at all for July 2013 through March 2014, because household income exceeded 200% FPL.
9. The BCP program had placed the adult in this BCP household into an HMO. Every month, the BCP program paid the HMO a monthly capitation fee of \$137.30 for the petitioner. In addition to the capitation amounts, the BCP program paid out other monthly medical charges, not covered by the HMO, which ranged from \$1.74 to \$134.99. *See*, Exhibit 5, monthly billings.

### **DISCUSSION**

The Department of Health Services (Department) is legally required to seek recovery of incorrect BCP payments when a recipient engages in a misstatement or omission of fact on a BCP application, or fails to report income information, which in turn gives rise to a BCP overpayment:

**49.497 Recovery of incorrect medical assistance payments. (1)** (a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s.49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits *under this subchapter* or s.49.665.

2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.

3. The *failure* of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf *to report any change in the recipient's financial or nonfinancial situation* or eligibility characteristics *that would have affected the recipient's eligibility for benefits* or the recipient's cost-sharing requirements.

(b) The department's right of recovery is against any medical assistance recipient to whom or on whose behalf the incorrect payment was made. The extent of recovery is limited to the amount of the benefits incorrectly granted. ...

(emphasis added)

Wis. Stat. §49.497(1). BCP is in the same subchapter as §49.497. See also, *BCP Eligibility Handbook(BCPEH)*, §28.1, online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>.

Department policy then instructs the agency, in a “no eligibility” case, to base the overpayment determination on the actual MA/BCP charges paid (see 2<sup>nd</sup> paragraph below):

#### **28.4.2 Overpayment Amount**

Use the actual income that was reported or required to be reported in determining if an overpayment has occurred.

*If the case was ineligible for BC+, recover the amount of medical claims paid by the state and/or the capitation rate. ... Deduct any amount paid in premiums (for each month in which an overpayment occurred) from the overpayment amount.*

If the case is still eligible for BC+ for the timeframe in question, but there was an increase in the premium, recover the difference between the premiums paid and the amount owed for each month in question. ....

*BCPEH*, § 28.4.2.

The petitioner did not deny the wages or his Social Security Disability attributed to him by the agency at hearing. He did not provide evidence to refute that he failed to report his [REDACTED] earnings. Rather, his focus was on the agency's inclusion of his daughter's Social Security Surviving Child benefit. If the child benefit is not counted, the petitioner's overpayment amount could be smaller. It would not be eliminated because the combination of his Social Security plus earnings would have made him liable for a premium, and the amount of the unpaid premiums would be the overpayment as a household of two persons.

The petitioner has at least 40% placement of his child, per court order. Thus, the agency included the child in the household, making it a household of two. *BCPEH*, § 2.2.1.2. The petitioner complains that the child's benefit goes to her mother, and he does not benefit from it.

A Social Security Child's Benefit is counted as income for BCP purposes. *BCPEH*, § 16.5, #3. Further, the Social Security regulations describing eligibility for the Child's Benefit characterize the minor child

as the person eligible for the benefit, not his/her parent. 20 C.F.R. § 404.350. Because the child is a minor, the Social Security Administration selected representative payee of the child (apparently, the mother). Given that the benefit belongs to the petitioner's household member – the child – the agency's determination was correct.

### **CONCLUSIONS OF LAW**

1. The Department correctly determined that the petitioner was overpaid as alleged.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

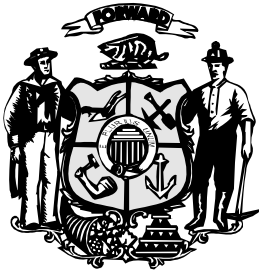
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 27th day of July, 2015

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\sNancy J. Gagnon  
Administrative Law Judge  
Division of Hearings and Appeals



## State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 28, 2015.

Portage County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability